

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DONNA B. RAY,

Appellant,

v.

EDUCATION CREDIT
MANAGEMENT CORPORATION,

Appellee.

ORDER

18-cv-821-bbc

On October 4, 2018, pro se appellant Donna B. Ray filed a notice of appeal from a September 20, 2018 order of the bankruptcy court concluding that her student loans were not dischargeable. Her brief in support of her appeal was due on December 10, 2018, but she has not yet filed a brief. Appellee Education Credit Management Corporation filed a motion to dismiss the appeal for lack of prosecution, citing Rule 8003 of the Federal Rules of Bankruptcy Procedure. Dkt. #4. Under Rule 8003, “[a]n appellant’s failure to take any step other than the timely filing of a notice of appeal” is ground for the district court “to act as it considers appropriate, including dismissing the appeal.” Ray’s opposition brief was due on January 18, 2019, but she has not filed any brief in opposition to the motion to dismiss. In fact, Ray has not filed anything in this case since filing her notice of appeal in October 2018.

By failing to file a brief in support of her appeal or a brief in opposition to the motion

to dismiss, Ray has abandoned her appeal. Additionally, at this point she has waived any argument she could have raised in opposition to the motion to dismiss. Alioto v. Town of Lisbon, 651 F.3d 715, 721 (7th Cir. 2011) (“litigant effectively abandons the litigation by not responding to . . . motion to dismiss”); G & S Holdings LLC v. Continental Casualty Co., 697 F.3d 534, 538 (7th Cir. 2012) (plaintiff waives “argument establishing that dismissal is inappropriate” by failing to make argument); Lekas v. Briley, 405 F.3d 602, 614 (7th Cir. 2005) (same). Therefore, I will grant the motion and will dismiss this appeal for failure to prosecute it. In re Nora, 417 F. App'x 573, 575 (7th Cir. 2011) (affirming dismissal of bankruptcy appeal for failure to prosecute).

ORDER

IT IS ORDERED that appellee Education Credit Management Corporation’s motion to dismiss for lack of prosecution, dkt. #4, is GRANTED, and this bankruptcy appeal is DISMISSED. The clerk of court is directed to close this case.

Entered this 4th day of April, 2019.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge